

sex, age, national origin, handicap or familial status.

(i) The accomplishment of this objective shall not be hampered by requiring the submission of a formal complaint of discrimination. A suspected discriminatory act, with or without the filing of a formal complaint, is a valid basis for investigation and, if discrimination is substantiated, imposition of restrictive sanctions.

(ii) On substantiation that an agent practiced discrimination, restrictive sanctions shall be imposed for a minimum of 180 days.

(iii) The fact that Public Law 90-284, 42 U.S.C. 1982, and Public Law 100-430 may or may not provide a remedy in a given case of discrimination affecting DoD personnel does not relieve a commander of the responsibility to ensure equal treatment and equal opportunity for such personnel or to impose restrictive sanctions against the agent and/or facility, when appropriate.

(iv) Military installations shall develop information programs to apprise Service members of the DoD policy and program for equal opportunity in off-base housing. Commanders should use local community resources, such as civil rights organizations, religious and service groups, and local information media, in support of their programs.

[55 FR 6248, Feb. 22, 1990. Redesignated and amended at 56 FR 32964, July 18, 1991]

§ 192.5 Responsibilities.

The *Secretaries of the Military Departments* shall:

(a) Ensure nondiscrimination in referring DoD personnel to off-base housing facilities.

(b) Continue efforts (as described in DoD 4165.63-M² to identify and solicit nondiscriminatory assurances for housing facilities within the commuting area, which are considered to be suitable for occupancy by Service members.

(c) Ensure that an office and staff required by DoD 4165.63-M are available in conjunction with the cognizant staff judge advocate or other legal authority to advise Service members on the following:

(1) The procedures in this part.

²See footnote 1 to § 192.4.

(2) The application of Public Law 90-284, 42 U.S.C. 1982, and Public Law 100-430 in specific situations.

(3) The rights of individuals to pursue remedies through civilian channels, without recourse and in addition to the procedures prescribed in this part, including the right to:

(i) Make a complaint directly to the Department of HUD and/or to the Department of Justice (DoJ) in the United States.

(ii) Bring a private civil action in any court of competent jurisdiction.

(d) Periodically review off-base housing procedures and policies to ensure effectiveness and compliance with this part. (Appendix A to this part is a checklist to help commanders with this review.)

(e) Cooperate with other Government Agencies investigating housing discrimination complaints filed by Service members.

(f) Ensure that each Military Service reports any housing discrimination cases and their results in the Annual Military Equal Opportunity Assessment Report required by DoD Instruction 1350.3.

[55 FR 6248, Feb. 22, 1990. Redesignated and amended at 56 FR 32964, July 18, 1991]

§ 192.6 Procedures.

(a) Appendix B to this part contains the detailed procedures for assisting Service members, investigating housing complaints, and reporting requirements for housing discrimination complaints.

(b) The complaint and investigative report required in section B., appendix B to this part is exempt from formal approval and licensing under DoD 7750.5-M.³

[55 FR 6248, Feb. 22, 1990. Redesignated and amended at 56 FR 32965, July 18, 1991]

APPENDIX A TO PART 192—CHECKLIST FOR COMMANDERS

A. Are all assigned personnel informed of the Equal Opportunity in Off-Base Housing Program requirements before obtaining housing off base?

B. Is there an effective information program ensuring equal opportunity in off-base housing information program?

³See footnote 1 to § 192.4.

C. Are community resources being used to support the equal opportunity in off-base housing information program?

D. Are housing discrimination complaints being processed within the required time?

E. Are complainants being informed in writing of the results of housing discrimination inquiry and/or investigating actions?

F. Are housing surveys being conducted periodically to obtain new listings?

G. Are restrictive sanctions being imposed immediately for a minimum of 180 days on agents found to be practicing discrimination?

H. Are the services of command representatives provided to assist applicants in their search for housing?

I. Are HHS personnel and equal opportunity personnel aware of and sensitive to housing problems encountered by DoD personnel?

J. Are equal opportunity in off-base housing reports being submitted accurately and on time?

APPENDIX B TO PART 192—PROCEDURES AND REPORTS

A. Off-Base Housing Procedures

DoD personnel seeking off-base housing shall be processed as follows:

1. Seen by an HRS when available (optional for DoD civilian personnel).

2. Provided assistance in seeking temporary and permanent off-base housing, as follows:

a. Counseling on the equal opportunity in off-base housing program with particular emphasis placed on reporting any indication of discrimination against DoD personnel in their search for housing.

b. Counseling and personal assistance shall include the following services:

(1) Offering to check by telephone the availability of selected listings. A record shall be made and retained for future reference of the date, time, and nature of any conversation confirming the availability of a facility. The race, color, religion, sex, national origin, handicap, or familial status of the applicant shall not be divulged. Caution must be exercised to ensure that a pattern of "confirmation only for minorities" does not develop.

(2) Offering the services of a command representative (such as a unit sponsor or other designated person, when available) to accompany and assist the applicant in the search for housing.

(3) Explaining various discriminatory methods that may be employed by agents. For instance, an agent may arbitrarily refuse to accept or consider the applicant as a tenant, falsely indicate the unit sought has been rented to another applicant, or refuse to make the unit available under the same

terms and conditions as are ordinarily applied to applicants for the facilities. In such instances the following shall apply:

(a) The agent shall be queried on the reasons why the unit is not available. After all reasonable steps have been taken to ascertain whether any valid nondiscriminatory reason can be shown for the agent's rejection of the applicant, and if there appears to be no such reason, a reasonable effort shall be made to persuade the agent to make the unit available to the applicant.

(b) The incident shall be reported immediately by the command representative and the applicant to the HRS for appropriate command action.

B. Complaint Procedures—United States

Commanders shall ensure that all DoD personnel are informed of the scope and provisions of the DoD Equal Opportunity in Off-Base Housing Program and advised to report immediately to the HRS (when available) any form of discrimination encountered when seeking housing within a Civilian Community. Incidents should be reported to base agencies or command representatives when an HRS is not available (i.e., equal opportunity officer, unit commander, supervisor). A verbal or written statement of discriminatory policy by an agent is considered to be an act or incident of discrimination, and the investigative procedures outlined in this appendix shall be followed.

1. *Inquiry into Complaint.* Complaints of off-base housing discrimination must receive prompt attention. An inquiry into the complaint shall begin within 3 working days after receipt of the complaint. The inquiry may be informal, but must be detailed sufficiently to determine if discrimination occurred. Upon receipt of a discrimination complaint, the HRS (if there is no HRS, a command designated representative) shall take the following action:

a. Immediately notify the commander.

b. Promptly interview the complainant to determine the details and circumstances of the alleged discriminatory act.

c. Immediately telephone or visit the facility and/or agent concerned, if the complaint is received shortly after the time of the alleged act and it concerns the change in availability of a vacancy (i.e., "just rented," etc.). Attempt to determine if a vacancy exists without making reference to the complaint received. Request the commander to authorize the use of verifiers, as necessary. (See this appendix, subsection B.2.)

d. Advise the complainant of the provisions and procedures in this Instruction and of the right to pursue further actions through HUD, DoJ, and local or State agencies. Coordinate efforts with the Office of Judge Advocate or other cognizant legal counsel to determine

to what extent legal assistance can be provided to the complainant. Assist the complainant in completing seven signed, dated, and notarized copies of HUD Form 903, "Housing Discrimination Complaint." The fact that a complainant might report an act of alleged discriminatory treatment, but declines completing a HUD Form 903, does not relieve the command of responsibility for making further inquiry and taking such subsequent actions, as may be appropriate.

e. Document the complainant's action for future reference and inform the commander of the results of the HRS preliminary inquiry and actions taken. The commander shall take action to assist the complainant in obtaining suitable housing. If, due to previous discriminatory practices in the community, suitable housing cannot be obtained by the complainant in a reasonable amount of time, the complainant and the commander may use this fact to justify a request for priority in obtaining military housing or for humanitarian reassignment. Reassignment action is a last resort and must be justified fully through command personnel channels.

2. *Use of Verifiers.* Verifiers are authorized to determine if a vacancy exists and whether or not rental or such practices are discriminatory. Verifiers shall not be used only for determining sincerity or normal practices of an agent about whom the HRS has not received a housing discrimination complaint.

a. When selecting and using verifiers, the following applies:

(1) Verification of the vacancy shall be made expeditiously after alleged act of discrimination.

(2) Verifiers may be volunteers. (The equal opportunity office is a possible source for identifying individuals to be used as verifiers.)

(3) The purpose of verification is to isolate the attribute of race, color, religion, sex, national origin, age, handicap, or familial status that is the suspected basis for the alleged discrimination against the complainant. Except for those attributes that are considered to be the source of the discrimination complaint, the verifier should possess attributes that are similar to the complainant. If two verifiers are used, one may possess similar attributes to the complainant. Ideally, two verifiers should be used.

b. Instructions provided to the verifiers by HRS personnel should include the following:

(1) Explanation of the equal opportunity in off-base housing and off-base housing referral programs.

(2) Verifiers are to obtain information only on agent and/or facility operating policies, practices, and procedures for subsequent determination of complaint validity.

(3) Verifiers are not to make a verbal or written contract for the housing unit, pay any money, or say they want the housing unit.

(4) Verifiers shall be knowledgeable concerning family composition, pets, and housing requirements of the complainant; they shall ask for identical housing requirements.

(5) The following information shall be obtained by the verifier, if possible:

(a) *Concerning the Facility.* What is available? Does it meet the requirements of the complainant? Amount of rent or cost of facility? Deposit required? Is an application required? What is the time between filing an application and permission to move in? Are there minority families and/or singles in the facility? Make a note of the presence or absence of a vacancy sign, and any other information deemed appropriate.

(b) *Concerning the Prospective Tenants/Purchasers.* If possible, ascertain criteria and qualifications that must be met (credit rating, salary, marital status, deposit, written application, etc.) and obtain a complete description of all procedures for becoming a tenant/purchaser including all steps from initial inquiry to moving in. Does the agent's subjective impression of the applicant appear to play any part in the decision to rent the unit?

(6) The verifier's statement shall be completed immediately after the verification visit, if possible. It shall be accurate, objective, and factual. Include the following in the statement:

(a) Date, time of visit, persons contacted, positions of persons contacted. Include any other pertinent information obtained during visit; i.e., length of time employed at facility, in addition to the information in this appendix, subparagraph B.2.b.(5), above.

(b) When reconstructing a conversation, write in the first person and try to use direct quotes. Do not use pronouns such as "he," "she," or "they." Clearly identify who said what to whom.

(c) Sign and date statement. Give full name, address, telephone number (duty or home), race, color, religion, sex, national origin, age, handicap or familial status, as relevant to the complaint.

3. *Complaint Process.* If the basic facts of the HRS preliminary inquiry appear to substantiate the complaint, the commander shall ensure that the following actions begin within 3 working days of receipt of the inquiry report:

a. *Informal Hearing.* Give written notice to the agent explaining the nature of the complaint and the agent's right to request an informal hearing with the commander. The notification shall state specifically the nature of the discrimination complaint and the right of the agent to appear personally at the hearing, to be represented by an attorney, to present evidence, and to call witnesses. The notification also shall state that the agent has 5 days after receipt of the written notice to request a hearing. If no request

is received within 5 days, the lack of response shall be considered as a waiver of the right to such hearing. The written notification either shall be delivered to the agent personally by a representative of the commander, or shall be sent to the agent by certified mail with return receipt requested.

(1) *Composition of an Informal Hearing.* The informal hearing shall be conducted by the commander or designee at a convenient location. The agent, agent's attorney, the complainant, the complainant's attorney, the equal opportunity officer, the HRS, the Staff Judge Advocate or other cognizant legal counsel, or other designated persons may attend.

(2) *Record of Hearing.* A summary of the hearing shall be made a part of the complaint file.

b. *Legal Review.* A legal review shall be accomplished following the inquiry and informal hearing (if applicable) and before the commander's final decision that the inquiry supports or fails to support the complaint. The summary and other pertinent documents shall be reviewed for content and completeness. A statement that such a review was conducted and signed by the Staff Judge Advocate or other cognizant legal counsel performing the review shall be made a part of the case file. That statement shall include:

(1) Any necessary explanatory remarks, including comments on the facts and evidence presented.

(2) Information known about pending complaints brought by other parties on the same facility and/or agent.

(3) Comments on the civil rights laws relevant to the particular case.

4. *Commander's Decision.* The responsibility for imposition of restrictive sanctions rests with the commander and cannot be delegated. The commander's decision shall be based on a full and impartial review of all facts and the policies and requirements as stated in this part. The commander's options include the following:

a. If the commander determines that more information is required, or for any reason further inquiry is deemed necessary, an officer shall be appointed from sources other than the HRS to conduct a formal inquiry or investigation, as the situation warrants. The officer, if not an attorney, shall be afforded the advice and assistance of a Staff Judge Advocate or other cognizant legal counsel.

b. If, in the commander's judgment, the inquiry or investigation fails to support the complaint the case shall be considered closed and the commander shall:

(1) Inform the complainant in writing of all actions taken and advise the complainant of rights to pursue further actions to include the following:

(a) The right to submit a complaint to the HUD and the DoJ.

(b) The right to bring a private civil action in a State or Federal court of competent jurisdiction.

(c) The availability of legal assistance from their local Staff Judge Advocate or other cognizant legal counsel in pursuing civil redress.

(2) Summarize in the report file the practices giving rise to the complaint, the actions and results of the inquiry or investigation, and if discriminatory practices were found, written assurances from the agent on future facility and/or agent practices. The following statement, completed by the complainant, shall be included, as part of the case file: "I am (am not) satisfied with the efforts taken by the commander on my behalf to achieve satisfactory resolution of my off-base housing discrimination complaint." If the complainant indicates a lack of satisfaction, the reasons must be included in the case file.

(3) Inform the agent of the results of the inquiry by command correspondence if an informal hearing was held. Such correspondence should reiterate DoD policy and requirements for equal opportunity in off-base housing.

(4) Forward unsubstantiated complaint reports and HUD Form 903 to the HUD and the DoJ if requested by the complainant.

(5) Retain a copy of the report file for 2 years for future reference.

c. If the inquiry or investigation supports the complainant's charge of discrimination and the discriminatory act is determined by the commander to conflict with DoD policy, the commander shall:

(1) Impose restrictive sanctions against the agent and/or facility for a minimum of 180 days. Sanctions shall remain in effect until the requirements in this appendix, subparagraphs B.6.a.(1) or B.6.a.(2), below, are met. Restrictive sanctions shall be imposed when a suspected discriminatory act, despite the absence of a formal complaint, is investigated and found valid. The fact that a validated discrimination complaint and/or incident has been or is scheduled to be forwarded to another Agency (the HUD, the DoJ, etc.) is not cause for withholding sanction action pending the outcome of that Agency's further review or investigation. When imposing a restrictive sanction, the commander shall:

(a) Remove the facility listing(s) from HRO files.

(b) Impose restrictive sanctions against all facilities owned or operated by the agent concerned.

(c) Place the facility on the restrictive sanction list maintained by the HRS. The restrictive sanction list shall be prepared on official letterhead stationery, signed by the commander, and include the authority for and conditions of the restrictive sanctions.

(d) Inform the agent concerned by command correspondence that:

(1) Restrictive sanctions have been imposed.

(2) The reasons, nature, and minimum duration of the restrictions.

(3) The action required for the removal of sanctions at the conclusion of the minimum period.

The notification of restrictive sanctions shall be sent by certified mail, return receipt requested or delivered to the agent personally by a command representative.

(e) Provide all DoD personnel reporting to the HRS with a copy of the restrictive sanction list, and advise members of the Armed Forces that they may not rent, lease, purchase, or reside in any of the listed facilities. Obtain a signed acknowledgment of receipt of the restrictive sanction list from the HRS using a DD Form 1746, "Application for Assignment to Housing."

(f) Advise other military installations of the restrictive sanction action taken when the sanctioned facility is located within the commuting area of their military installations.

(2) Inform the complainant in writing of all actions taken and advise the complainant that his or her case will receive continuing action to include, if the complainant requests, forwarding the case file to the HUD and/or the DoJ for action.

(3) Before forwarding the report to the respective Military Department, prepare a memorandum outlining the following:

(a) The base efforts made to obtain housing relief for the complainant.

(b) The impact of restrictive sanctions on the off-base housing program and DoD personnel and their dependents.

(c) Any other considerations deemed relevant.

(4) Include a statement completed by the complainant for the case file. (See this appendix, subparagraph B.4.b.(3), above.)

(5) If the act of discrimination falls within existing regulations, forward a copy of the complaint and investigation report directly to the HUD within 180 days after the occurrence of the alleged discriminating act, using HUD Form 903. The original report shall be sent to the appropriate HUD Regional Office or the U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity, 451 7th Street SW., Washington, DC 20410. A copy of the complaint and investigation report shall be forwarded to the Civil Rights Division, Department of Justice, Washington, DC 20530.

(6) When more than one complaint alleging discrimination in the same facility or by the same agent has been received, consolidate the complaints for the inquiry, legal review, and commander's memorandum.

d. When a commander receives a complaint alleging further discrimination in a facility or by an agent after a completed case file has

been closed, the commander shall forward the summary of the facts on the subsequent complaint, outlined in this enclosure, subparagraph B.4.c.(6), above. Include brief comments indicating the extent to which the new complaint affects the previous action.

5. *Followup Actions.* After forwarding the report and all required attachments to the HUD and the DoJ, the commander shall take the following actions:

a. Cooperate with the HUD, the DoJ, and the local and State agency representatives during their investigation and processing of the case, should those entities seek assistance.

b. Periodically determine the status of the case by maintaining liaison with the HUD office concerned. Contact shall be maintained until such time as the case is resolved by the HUD.

c. Ensure that the complainant is kept informed directly by the HUD and/or the DoJ.

d. Ensure that DoD personnel comply with the restrictive sanctions imposed on the facility and/or the agent. Housing personnel will comply with the following:

(1) Military personnel moving into or changing their place of residence in the commuting area of a military installation or activity may not enter into a rental, purchase, or lease arrangement with an agent or a facility that is under restrictive sanction.

(2) Implement procedures for ensuring that DoD personnel seeking housing are made aware of, and are counselled on, current restrictive sanctions.

(3) Sanctions are not applicable to the DoD personnel who may be residing in a facility when the sanction is imposed or to the extension or renewal of a rental or lease agreement originally entered into before the imposition of the sanction. Relocation of a military tenant within a restricted facility is prohibited without the written approval of the commander.

(4) If it is determined that a member of the Armed Forces has intentionally taken residency in a restricted facility contrary to instructions received by Housing Referral personnel, the commander shall take appropriate disciplinary action against that number.

(5) Periodically publish a current listing of restricted facilities in the base bulletin (or other appropriate means of internal distribution). Minimally, such publication shall occur when there has been an addition or deletion to the list.

6. *Removal of Restrictive Sanction*

a. A facility and/or agent may be removed from restrictive sanction only if one of the following actions is taken:

(1) The restrictive sanction may be removed before completion of the 180 day restrictive period if an approved waiver request is obtained from the senior installation commander concerned, or designee. Consideration shall be given to lifting an imposed sanction only in exceptional circumstances and in conjunction with a written assurance of nondiscrimination from the agent concerned.

(2) After completion of 180 days on restrictive sanction, if the agent provides written assurance of future nondiscrimination to the HRS.

b. The commander shall inform the HRS, the equal opportunity office, and the agent in writing of the removal from restrictive sanction.

7. *“Privacy Act” and “Freedom of Information Act” Inquiries.* Requests for information from reports of housing discrimination shall be processed in accordance with 32 CFR parts 285 and 286a.

C. Compliant Procedures—Outside the United States

Commanders of installations or activities outside the United States shall ensure that all DoD personnel, on reporting to the HRS, are clearly informed of the scope and provisions of the DoD Equal Opportunity in Off-Base Housing Program and advised to report immediately to the HRS any form of discrimination encountered as a tenant, prospective tenant, or purchaser. Incidents reported to base agencies or representatives other than the HRS (i.e., equal opportunity officer, unit commander, supervisor) shall be brought to the immediate attention of the HRS for appropriate action. On receiving a complaint of discrimination, the commander and HRS shall:

1. Consult with the Staff Judge Advocate or other cognizant legal counsel to determine if the laws of the country concerned (or any subdivision thereof) prohibit any of the actions outlined in this appendix, section B., above.

2. Take actions outlined in this appendix, section B, above, except that a HUD Form 903 shall not be completed because reports of cases arising outside the United States are not forwarded to the HUD or the DoJ. Complainants should understand that the fair housing provisions of the P.L. 90-284, “Civil Rights Act,” Title 42, United States, 1982, and Public Law 100-430, “Fair Housing Amendments Act of 1988,” September 13, 1988, are not applicable in areas outside the United States.

3. Determine, with legal advice, whether redress for the discriminatory act should be sought from authorities in the host country. Redress shall be based on the laws of the country (or subdivision thereof) concerned.

D. Reporting Requirements

1. A copy of each complaint and investigative report that substantiates a housing discrimination shall be submitted to the appropriate Military Department (manpower and reserve affairs and/or the equal opportunity office) not later than 45 days from the date the case is completed. Under normal circumstances, the commander of the installation concerned shall complete the required investigation and processing complaints within 45 days from the date that a housing complaint is filed by a complainant.

2. A copy of complaint and investigative reports that do not substantiate allegations of housing discrimination shall be kept on file at the installation level for a 24-month period beginning from the date the case was completed.

PART 193—HIGHWAYS FOR NATIONAL DEFENSE

Sec.

193.1 Purpose and scope.

193.2 Applicability.

193.3 Policy.

193.4 Authorities and responsibilities.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 33 FR 13016, Sept. 14, 1968, unless otherwise noted.

§ 193.1 Purpose and scope.

This part sets forth policy, responsibilities, and authority in matters pertaining to Department of Defense highway needs and, when appropriate, to the highway needs of other Federal agencies, during peacetime and emergencies in the United States and its territories and possessions.

§ 193.2 Applicability.

The provisions of this part apply to all components of the Department of Defense.

§ 193.3 Policy.

In order to insure that the national defense is served by adequate, safe and efficient highway transportation, it shall be the policy of the DoD to (a) integrate the highway needs of the national defense into the civil highway programs of the various State and Federal agencies, and (b) cooperate with those agencies in matters pertaining to the use of public highways and in planning their development and construction.